

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

PERMIAN BASIN PETROLEUM
ASSOCIATION, NATIONAL
CATTLEMEN'S BEEF ASSOCIATION,
TEXAS CATTLEFEEDER'S ASSOCIATION,
KANSAS LIVESTOCK ASSOCIATION,
OKLAHOMA CATTLEMEN'S
ASSOCIATION, AND NEW MEXICO
CATTLE GROWER'S ASSOCIATION,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR,
U.S. FISH AND WILDLIFE SERVICE,
DEBRA HAALAND, in her official capacity as
SECRETARY OF THE INTERIOR,
MARTHA WILLIAMS, in her official capacity
as DIRECTOR OF THE U.S. FISH AND
WILDLIFE SERVICE,

Defendants.

Civil Action No. 7:23-cv-49

DECLARATION OF BRETT HARTL

I, Brett Hartl, make the following declaration:

1. I am a resident of Prescott, AZ.
2. I am competent to make this declaration. I provide this declaration based upon my personal knowledge. I would testify to the facts in this declaration under oath if called upon to do so.
3. I am the Government Affairs Director at the Center for Biological Diversity ("Center"), and I work out of our Washington, D.C., and Arizona offices. I have been with the Center since 2013.

4. I am also a member of the Center and have been a member of the Center since 2013. As a member, I rely on the Center to represent my interests in conserving native species and their habitats. I support its efforts to secure a future for all species, great or small, and to prevent development, pollution, and climate change from driving species extinct.

5. I hold a bachelor's degree from Prescott College in conservation biology, and a law degree from Lewis and Clark Law School. Prior to law school, I spent five years as a field biologist working with endangered species in the northwest Hawaiian Islands, Kauai, and Southern California.

6. The Center is a member organization incorporated under the laws of the State of California. It is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code. The Center has over 89,000 active members across the country. The Center is based in Tucson, AZ, and works throughout the entire United States. Our other major offices are in Washington D.C., Oakland, CA, and Portland, OR.

7. The Center's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and water, and public health through science, policy, and environmental law. Based on an understanding that the health and welfare of human societies are closely linked to the condition of the natural environment, the Center works to protect natural resources like air, water, and land and to secure a future for animals and plants hovering on the brink of extinction. We work to protect the ecosystems they need to survive, for the species and for the people that interact with, depend on, and cherish these natural resources.

8. Protection of endangered and threatened species is a core organizational focus of the Center. Whether large or small, we believe all species have an intrinsic right to live. The United States and the world at large are currently in the midst of a biodiversity crisis: the diversity of life that sustains ecological systems and human cultures around the world is collapsing. As a result, the Center works tirelessly to protect endangered and threatened species through advocacy, litigation, education campaigns,

conservation of critical habitats for species, and holding federal agencies accountable to their duties to protect species as directed by Congress, under the Endangered Species Act.

9. The Center's work has led to the listing and protection under the Endangered Species Act of numerous habitat and climate-imperiled species including the polar bear, ringed seal, bearded seal, numerous coral species, the Tiwi, numerous Florida Key species, the Western glacier stonefly and many others. We also work to improve recovery planning and recovery implementation for all species under the Endangered Species Act and to find mechanisms to strengthen protections under Section 7 of the Endangered Species Act.

10. As a result of both my background and training in conservation, I consider myself an amateur naturalist. I look for, photograph, and record videos of wildlife, both in the United States and around the world. Watching wildlife is my deepest passion and my favorite personal pursuit, and I go looking for wildlife almost every week of the year. Thus far, I have observed over 525 species of mammals and 3,900 species of birds around the world. While I try to view new species, I also try to obtain photos and videos of species that I was unable to capture images of in the past. I view and share my photos and videos with my friends, colleagues, and the general public in various ways, including through my YouTube channel, which has over 2,300 subscribers. Some of my videos have been used on CBS, NBC and other television channels, and have been viewed by millions of people.

11. As a conservation biologist and lawyer who has dedicated my career to preserving wildlife, I also take great personal and professional satisfaction in observing the diversity of wildlife that remains present due in part to the efforts of those in the conservation community.

12. I am particularly interested in viewing threatened and endangered species in their natural habitats.

13. I first viewed lesser prairie-chicken in 2008 at the Cimarron National Grassland in southwest Kansas. I also viewed them in July 2013 near Portales, New Mexico at a location administered by the New Mexico Game and Fish Department. I have also tried to view lesser prairie-chicken in 2018 in

west Texas and in the summer of 2022 in New Mexico but was unsuccessful. I plan on returning to New Mexico during the summer of 2023 and will look for lesser prairie-chickens again during that trip. I plan to return to the Cimarron National Grassland in southeast Colorado and southwest Kansas in April of 2024 to look for the lesser prairie-chicken.

14. Lesser prairie-chickens are threatened by the development of oil and gas across the Permian Basin, which continues to degrade and eliminate habitat for the lesser prairie-chicken, pushing the species into smaller and smaller remnants of habitat, and certainly precluding their ability to recover in the future. Lesser prairie-chicken are also impacted by droughts, which have grown more frequent and more severe across their range due to climate change. I believe that protection under the Endangered Species Act is vital for the survival and recovery of this species, and delays in any protections undermine the species' conservation status.

15. While the exact number of lesser prairie-chicken that historically occurred is unknown, it probably numbered at least a million birds, and has declined substantially over the past hundred years, and especially so in the last few decades as oil and gas development has severely fragmented the bird's habitat. Endangered species protections are critical to stopping any further declines of the lesser prairie-chicken as the efforts by states and private entities to conserve this species have generally failed to arrest its continued decline, let alone put the species on a road towards recovery.

16. The lesser prairie-chicken was first petitioned for protection in 1995 by the Biodiversity Legal Foundation, which merged and was incorporated into the Center for Biological Diversity a few years later. The U.S. Fish and Wildlife Service ("Service") responded to the petition in 1998 finding that the species warranted protection, but listing was precluded by higher listing priorities.

17. Despite continued advocacy by the Center, the prairie-chicken remained on the candidate list for over a decade, all the while its conservation status continued to decline. In 2008, during the Service's annual review of candidate species, the lesser prairie-chicken's "listing priority number" was

changed from 8 to a 2, which was one of the highest possible rankings in terms of urgency to protect a species because the magnitude of threats to the bird had changed from moderate to high.

18. Following additional litigation brought by the Center, an agreement was reached with the Service in which the agency agreed to submit to the Federal Register either a proposed listing or a negative listing determination for the lesser prairie-chicken by September 30, 2012. The Service issued a proposed rule to list the lesser prairie-chicken as a threatened species throughout its range by that legal deadline. In May of 2013, the Service reopened the comment period regarding its proposed threatened listing and proposed a section 4(d) rule exempting various development activities from the prohibition on take of listed species. In March of 2014, the Service finally granted Endangered Species Act protections for the lesser prairie-chicken, 17 years after it was first petitioned for protections.

19. In 2015, the Western District of Texas court vacated the rule listing the lesser prairie-chicken as threatened. The Service did not appeal the decision of the court and removed the lesser prairie-chicken from the list of threatened species.

20. Following this in 2016, the Center filed a new petition seeking to list the lesser prairie-chicken under the Endangered Species Act. That petition resulted in the final rule now at issue in this case, listing the lesser prairie-chicken as endangered in a southern Distinct Population Segment (“DPS”) and threatened in the northern DPS with a section 4(d) rule setting for specific protections for the species.

21. I would be injured by the loss of federal Endangered Species Act protections for the lesser prairie-chicken because, without the conservation measures needed to save this species, there will be fewer lesser prairie-chickens on the landscape, which in turn makes it more difficult for me to observe and photograph this species, harming my personal enjoyment and diminishing my wildlife watching experiences.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of April 2023, in Prescott, AZ.

A handwritten signature in black ink, appearing to read "Brett Hartl", with a long horizontal flourish extending to the right.

Brett Hartl